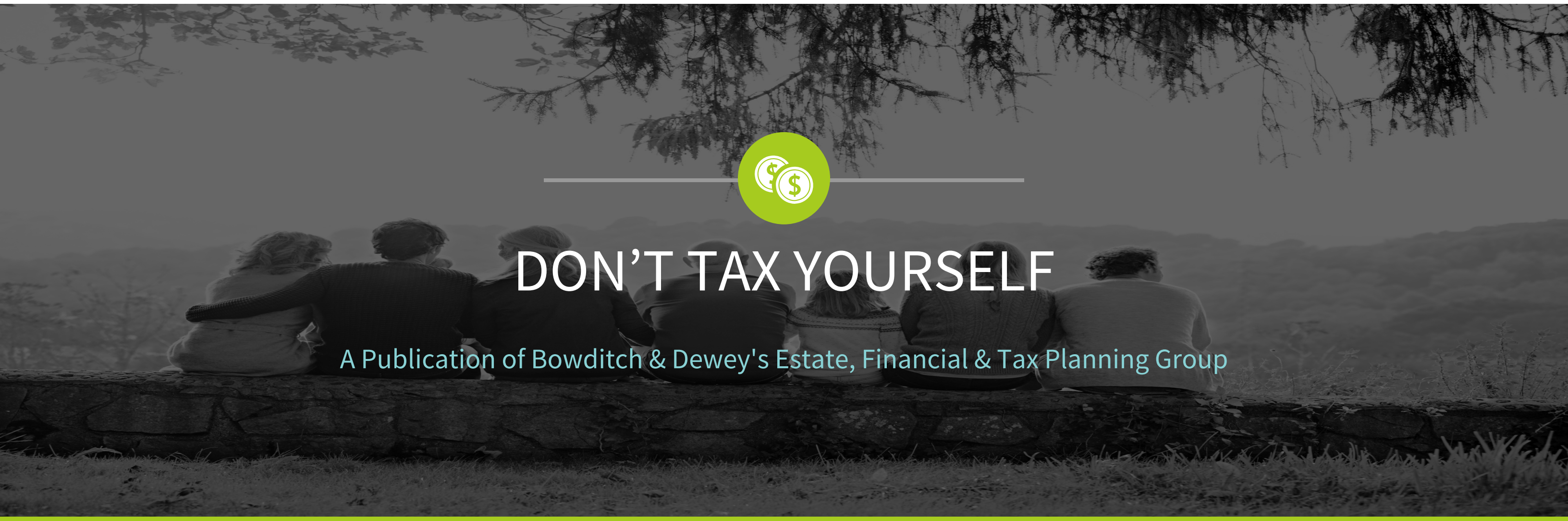

New Reporting Regime: Estates Who Have to File Federal Estate Tax Returns Need to be Aware of New Basis Consistency Law

BY EILEEN Y. LEE BREGER • MARCH 30, 2017

On July 31, 2015, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 introduced new tax law that affects executors who are required to file a federal estate tax return and beneficiaries receiving assets from such an estate. The new legislation provides for consistent reporting between the value of assets reported on estate tax return and the income tax basis reported by beneficiaries inheriting property.

Estates that are required to file a Form 706 or Form 706-NA under section 6018(a) must file a supplemental Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*, which identifies the value of each interest in property as reported on the return and furnish Schedule A of Form 8971 to each person acquiring any interest property included in the decedent's gross estate. Under the new section 1014(f), a taxpayer's initial basis in a property acquired from decedent cannot exceed the property's "final value" for estate tax purposes or, if a final value has not been determined, the valued reported on the Form 8971. Taxpayers may be subject to a 20% accuracy-related penalty for inconsistent basis reporting.

As far as applicability and timing, estates that file a federal estate tax return after July 31, 2015 are subject to the new basis consistency law. Form 8971 is required to be filed no later than 30 days after the date the estate return is required to be filed or is actually filed. Additionally, Form 8971 may not be required in certain instances, such as when the estate plus adjustable taxable gifts is less than the exemption, when the return is filed solely to allocate generation-skipping transfer tax or when a return is solely filed to elect portability of the deceased spousal exclusion amount (DSUE).

Practitioners have been confused and have questioned several aspects of the new law. There are two major sources of confusion. First, some practitioners have noted the harshness of the zero basis rule. This rule provides that if an executor discovers omitted property that would have generated an estate tax liability and the statute of limitations for the assessment period has passed, the final value of the property will be zero and thus, the beneficiary's basis in the inherited property will be zero.

1. **Cash.** It is unclear whether bank accounts, money market accounts, promissory notes and accounts receivables fall under the cash exception.

2. **Income in Respect of a Decedent (IRD).** Roth IRAs and Roth 401(k)s are not items of IRD and thus would not fall under the IRD exception and would be reported, but assets in a Roth IRA or Roth 401k are not taxable to the beneficiary. Will the IRS come up with an exception for Roth accounts?

3. **Tangible personal property** under $3,000 (not requiring appraisal under Regs. Sec. 20.2031-6(b)).

4. **Property that is sold or otherwise disposed** of by the estate during the course of administration in a transaction in which capital gain or loss is recognized.

The IRS needs to provide more guidance and clarity on the new statute and regulations. Meanwhile, estate planning practitioners advising their clients will have to be aware of the pitfalls and gaps in the new law and keep abreast of new developments in 2017.